

IN SENATE,

March 11, 1831:

COMMUNICATION

From the Governor, relative to the boundary line
between this State and the State of New-Jersey.

TO THE LEGISLATURE.

GENTLEMEN,

I consider it my duty to lay before you the accompanying communication from the Attorney-General, concerning our controversy with New-Jersey. The matter to which it relates, derives much of its importance from the grounds assumed by the Judges of the Supreme Court of the United States, with regard to their powers; and I feel bound to present to you my views of the subject, as well as the course which I feel impelled by a regard to the interests and honor of the State to pursue, unless you shall think proper to give it a different direction.

You are apprised by the accompanying papers, and those which have preceded them, from the same source, of the several steps taken by the State of New-Jersey, to compel our appearance before the national judiciary, to contest with her the question of sovereignty over a portion of the waters of the Hudson river.

It seems to be a mere question of sovereignty over the waters, inasmuch as New-Jersey admits in her bill of complaint, that whatever right she may have had to the islands, those rights have been lost by adverse possession and the lapse of time.

The Attorney-General, with my sanction, has hitherto declined to appear in court and respond to the complaint, without intending any disrespect to that high tribunal, and in a manner which I trust

precludes the imputation of such a motive. His refusal to appear was grounded upon the belief, that the court has not been invested with the power to take cognizance of original suits, where a State is made a defendant party. The reasons for this opinion are more fully detailed by the Attorney-General, but may be succinctly stated as follows :

1. It was not designed by the Constitution to confer that power on the court, until Congress had legislated upon it, and declared *what* controversies between States were proper to be entertained by the court, and what should be the mode of proceeding. The Constitution is silent in regard to both of these matters. A strong argument in favor of this construction is afforded by that clause in the Constitution, which, after enumerating the powers of Congress, adds : "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and *all other powers* vested by the Constitution in the government of the United States, or in any department or officer thereof."

2. That Congress had passed no laws for these purposes.

In 1789, a judiciary act was passed, giving writs and other proceedings in all cases, other than those where a state was defendant. This was a practical construction of the constitution, and showed their opinion that legislation was necessary to enable the court to proceed. And by neglecting to provide specifically, for proceedings in controversies between states, they indicated their opinion that the time had not arrived when it would be proper for the court to entertain such suits. The meaning of Congress is most distinctly marked by the wording of the judiciary act. It grants to the court, the power to issue certain writs, and further, "all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law."

Now, as no mode of proceeding, against a sovereign state, is known to the common law, it would seem to be a fair conclusion, that Congress designed, by precise and unequivocal language, to exclude an implication, that the power to proceed against a state was granted by the act.

3. Although the court has frequently attempted to exercise this power, by entertaining writs against states, and summoning them to

appear and answer, no state has ever obeyed their summons ; thereby virtually denying the power of the court.

4. Several attempts have been made by states to prevail upon Congress, to pass laws for this object ; but they have uniformly refused to vest this power in the court. Two of these attempts, made in 1822 and 1828, are detailed in the several reports of the Attorney-General.

5. The state of New-Jersey has, impliedly, admitted the want of power in the court, by her attempt to obtain the passage of the law in 1822, and by a proposition made through her commissioners, to the commissioners on the part of this State, in 1827, to submit this controversy to the Supreme Court, as an impartial tribunal to arbitrate between the parties.

Taking the foregoing view of the subject, I did not consider myself justified in permitting the State to be represented as a party defendant, before a tribunal which had no right to exercise authority over us, and which, I confidently hoped, would, on a review of its own powers, come to that conclusion.

But the matter has now assumed a new aspect. The opinion of that court shews, that they view the subject differently, or at least are disposed to assume the jurisdiction on an *ex parte* case.

The grounds upon which, it is supposed, that the court claims cognizance of the controversy, are :

1. That ample power is given to them by that clause of the constitution, which ordains that " The judicial power shall extend to controversies between two or more states." That having the power, the means of exercising it are incidental, and that they may, by rules of court, prescribe the forms of proceeding.

2. That the proceedings in suits before that court, prescribed by statute, are applicable to cases where a state is defendant, and that therefore Congress has legislated on the subject ; and,

3. That the decisions of that court have been uniform, in all cases which have come before it, and support the authority of the court.

We have now reached a point in the progress of this litigation, where the future action of the State should be determined upon

with deliberation, and governed by a due sense of all the high responsibilities resting upon us, as citizens of the United States, and members of a corporate state sovereignty. This State can never forget that she is a member of the Union, and has a large stake in its perpetuity. While she will permit no encroachments on the part of the general government, she will put forth her strong arm, in time of need, to support it in the exercise of its acknowledged powers. If, on this occasion, she is compelled to differ with the national judiciary, I have no doubt, that she will do so firmly and dispassionately, and afford a becoming example of respect towards the tribunal deemed worthy, by the founders of our government, to be the depository of the power for preserving the peace of the Union.

It was undoubtedly a part of the design of our government to have a judicial tribunal to decide on all questions of conflicting rights, growing out of the limitations of the sovereignty of the States, and the specific delegations of power to the general government. And one of its special objects was to adjust amicably, all such differences as might arise between the States. The want of such a power, with sufficient energy to enforce its decisions, was one of the leading motives for proposing a Constitution.

Every worthy American must be penetrated with feelings of gratitude, when he contemplates the beautiful structure of our government, and the wonderful harmony and adaptation of its parts. The people, although divided into several communities, are nevertheless, by their compact, bound together in fraternal relations, under a common head, with all the same social interests, duties and feelings, which belong to a consolidated nation. In its great outlines, human wisdom could not devise any thing more perfect, to secure those who live under its protection, in the possession of their rights, and to defend them from the calamities attendant upon civil dissensions. It would have been essentially defective in its arrangements, if provision for the adjustment of disputes between the members of the confederacy had been omitted. An appeal to arms, which is the only means of redress by one nation for the wrongs committed upon it by another, is ill suited to the condition of the members of the same political family.

But in this part of the system, an inherent difficulty reminds us of the imperfection of all human works. Our government is based upon a written Constitution, which is the rule of conduct for all the

constituted authorities. Legislative discretion finds its limits there. Who shall decide when its boundaries are transgressed? If this power had been placed in Congress, then not the Constitution, but the will of that body, would be the fundamental law of the empire. It is in the nature of things, that there must be an irresponsible power, somewhere, and in the adjustment of the parts of our government, it was deemed essential to the uniformity of its action, to place it beyond the influence of those commotions, arising from popular errors, which indiscriminately destroy, and soon pass away. This power was, therefore, intended to be placed in judicial officers, rendered immoveable, save for misconduct.

This body, being the ultimate tribunal from which no appeal lies, must necessarily decide, among other things, upon its own constitutional powers. The only relief from its errors rests in a resort to amendments of the Constitution, to an impeachment of the judges, and in cases of flagrant usurpations, to a refusal by the officers to execute its decrees, or a forcible resistance on the part of the State, which is sought to be subjected to its power.

While we deny to the Supreme Court the right to bring us before its judgment seat, we have no reason to believe that it designs to usurp authority over us, or that it will persist in enforcing a jurisdiction, when it is convinced of its error. Indeed the court seem to invite us to a discussion of their power, in the closing part of their opinion, where they say, that "the question of proceeding to a final decree will be considered as not conclusively settled, until the cause shall come on to be heard in chief."

However clear we may consider the question to be, that the court has no power, yet the only peaceful tribunal which has cognizance of the question has decided it provisionally against us, and it becomes a question of magnitude, whether we shall now assume an attitude of resistance, or whether we shall embrace the opportunity still presented to us, to debate the question.

It will be proper to inquire, in the first place, if any, and what rights of the State will be compromised by an appearance in court, to contest the jurisdiction, and ultimately to try the merits of the dispute between the States. A resort to forcible resistance would be both unwise and unbecoming in the State, except on undisputed ground, and at the last point of forbearance.

It has been feared by some, that if we should appear in court, we should thereby waive our right to object to the jurisdiction in the subsequent progress of the cause. If a law of Congress be necessary to give effect to the Constitution, and the court takes no jurisdiction without it, then an appearance by the State waives nothing. Jurisdiction cannot be conferred by an act which does not extend it over all the States. The Constitution or the law, or both conjointly, may confer such a jurisdiction, but no State can bestow it either by implication or express consent. It is a rule of law, that the consent of a party does not give jurisdiction: a court takes no more power by virtue of it, than an unofficial person. The authority of a tribunal, created by the consent of the parties, is derived from the submission, and cannot be extended beyond its terms. Contending as we do, that the clause of the Constitution which declares, that the judicial power shall extend to controversies between States, is a dormant power, and does not attach to any tribunal until it is vivified by an act of Congress, our appearance, in compliance with a summons from the court, under a protest against its proceedings, will admit nothing.

But supposing that this position is untenable, and that the Constitution should be interpreted to mean to invest the court with a jurisdiction, which it is unable to execute, for want of process to bring the party into court; yet we have a right to contend, and I think we will be sustained by the court, and the enlightened sense of the American people, that the technical rules of law, so proper and expedient in ordinary causes between private parties, ought not to apply to a case so peculiar and momentous. This case is entirely anomalous, involving a great and fundamental question of right. It is to determine the limits of power between a State sovereignty and an arm of the national government, beyond which there is no appeal, except to that which severs the bonds of the Union, and involves us in all the horrors of civil war. Such rights as we contend for are not to be controlled by technicalities, and cannot be waived by any implication. We have too much regard to the public peace; too much respect for the constituted authorities; too much interest in sustaining the National as well as State governments in their proper spheres, to put at defiance any branch of authority created by the Constitution, until argument and remonstrance are exhausted.

We have great confidence, that should the merits of the controversy between this State and New-Jersey be examined, they will

be found to rest with us. If this should be the result of an investigation before the court, it would quiet this hitherto vexatious dispute, which has so long disturbed our harmony with a sister State. If, however, a judgment should pass contrary to our expectations, and justice should not demand of us to cede the disputed territory, and we should still deny the authority of the tribunal, we should then be in as good a condition to resist the execution of the judgment, as if it had passed against us by default of appearance.

As the court has seen fit to select the Executive and Attorney-General, as the proper persons to bring into their court, as the representatives of the State, I shall, unless otherwise directed by the Legislature, instruct the Attorney-General to protest against any waiver of right by appearing, and to appear and contest the suit in its progress, to its final determination.

E. T. THROOP.

Albany, March 10, 1831.

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REPORT OF THE ATTORNEY-GENERAL.

Albany, February 24, 1831.

His Excellency ENOS T. THROOP,
Governor of the State of New-York.

SIR—

It has become my duty again to invite the attention of your Excellency, to the suit commenced in the Supreme Court of the United States, by the State of New-Jersey, against the People of the State of New-York. And in doing so, it may be proper to give a brief account of the nature and progress of this litigation.

In June, 1829, a copy of the bill filed by the State of New-Jersey, and a subpoena to appear and answer, were served upon the Governor and Attorney-General. The subpoena was directed to those officers, and commanded them to appear “on behalf of the people of the State of New-York,” which they were not to omit “under the penalty of five hundred dollars.”

The bill filed by the State of New-Jersey, after setting forth letters patent granted by king Charles the second, to his brother James, duke of York, in 1664, and several other grants, proceeds as follows : “And your complainants respectfully insist, that by the fair construction of the grants before mentioned, and by the principles of public law, the State of New-Jersey is justly and lawfully entitled to the exclusive jurisdiction and property of and over the waters of the Hudson river, from the forty-first degree of latitude, to the bay of New-York, to the *filum aquæ*, or midway of the said river ; and to the midway or channel of the said bay of New-York, and the whole of Staten-Island Sound, together with the land covered by the water of the said river, bay, and sound, in the like extent.

“And your complainants well hoped that the people of the State of New-York, would have permitted your complainants peaceably and quietly to enjoy her said rights of property, jurisdiction and sovereignty, over the said waters, and land covered with water, of the said river Hudson, and the other dividing waters of the Bay of New-York, without the interruption and disturbance of the State of New-York, as in justice and equity she ought to have done. But

now, so it is, may it please your honors, that the people of the State of New-York, intending to encroach upon and aggrieve the State of New-Jersey in her lawful rights, at an early period of the settlement of the said States, and while they were colonies, wrongfully and forcibly possessed herself of the said island, called Staten-Island, and the other small islands in the dividing waters between the two States ; and your complainants then being a feeble colony, and under a proprietary government, although the right of New-Jersey was publicly and frequently urged to the said islands, she could oppose no effectual resistance to the said encroachment of the State of New-York, which was then under royal patronage, and her inhabitants exempted from the taxation which New-Jersey was obliged to impose upon her citizens ; that the possession thus acquired by New-York, has been since that time acquiesced in, and the State of New-York refuses to yield up to your complainants the said islands, insisting that by the principles of public law, the said possession of the said islands, has established the title to the same in herself ; but your complainants insist and charge, that although it may be true, that the long continued possession of New-York of the said islands, may conclude your complainants from disturbing the same at this time, and which your complainants are willing, for the sake of peace, to admit ; yet that the State of New-York has no other pretence of title to the said islands, on which she can rely, but the said adverse possession ; and that inasmuch as the said possession of those islands by the State of New-York, has been uniformly confined in its exercise to the fast land thereof, your complainants insist, that the title of New-Jersey to the whole waters of the Staten-Island Sound, remains clear and absolute in your complainants, according to the terms of the said herein recited grants.” The principal prayer of the bill is, that “ the eastern boundary line between your complainants and the State of New-York, may by the order and decree of this honorable court, be ascertained and established, and that the rights of property, jurisdiction and sovereignty of your complainants to the *filum aquæ*, or middle of said Hudson river, from the forty-first degree of north latitude on the said Hudson river, through the whole line of the eastern shore of the State of New-Jersey, as far as the said river washes and bounds the said State of New-Jersey, down to the Bay of New-York, and to the channel or midway of the said bay ; and to all the waters and the land they cover, lying between the New-Jersey shore and Staten-Island, and all other waters washing the southern shores of New-Jersey within and above the Narrows ; and that your complainants may be quieted

in the full and free enjoyment of her property, jurisdiction and sovereignty, in the waters aforesaid, and that the right, title, jurisdiction and sovereignty of New-Jersey in and over the same, as part of her public domains, be confirmed and established by the decree of this honorable court."

There may be some difficulty in ascertaining from the statements and allegations in the bill, whether the State of New-Jersey intends to claim any thing more than the right of territorial jurisdiction, separate from the right of property in the soil. If the claim be of this description, it will be difficult to find a precedent for its adjustment, either in a court of law or of equity jurisdiction. And if a right of property is asserted, it would seem to be a case requiring a trial at law in some of those actions which have been devised for determining the right to real property. In the one case, a question is presented in relation to the jurisdiction of the court over the subject matter in litigation; and in the other, a question going only to the form of the remedy.

But these were questions of less immediate importance than the one presented by this proceeding, whether the Supreme Court of the United States could exercise original and compulsory jurisdiction over a State. Having at an early day expressed to your Excellency and the Legislature, an opinion that the court could not take cognizance of the suit, I deem it proper on this occasion, briefly to state some of the grounds upon which that opinion was founded.

The Constitution of the United States, (Art. III. sec. 2,) declares among other things, that "the judicial power—shall extend to controversies between two or more States; between a State and citizens of another State—and between a State, or the citizens thereof, and foreign States, citizens or subjects." The 11th amendment to the constitution declares, that "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State." Without considering whether this ought to be regarded as a construction, rather than as an amendment to the Constitution, and conceding that the judicial power of the United States extends to controversies between States, it still remains to be considered, whether the grant of jurisdiction by the Constitution included also the means of carrying it into execution; or whether those means were to be provided by Congress.

The Constitution provides, (Art. III. sec. 1,) that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish;" but neither the number of Judges of which the Supreme Court should consist, or the times or places of their meeting, nor the amount of their compensation, was settled. These, with many other essential things, were left for the determination of Congress, in filling up the great outline that had been marked out by the Constitution. That legislation would be necessary in the organization of the new government, and its several departments, was foreseen and provided for by the framers of the Constitution. That instrument declares, (Art. I. sec. 8, sub. 17,) that "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." In this provision a distinction is plainly recognized between a power vested by the Constitution in any department of the government, and the necessary means of carrying that power into execution.

There is, therefore, nothing absurd in saying, that a power conferred by the Constitution may remain dormant, if Congress, for any cause shall omit to pass the necessary laws for bringing it into exercise. Had no laws been passed, providing for the organization of the supreme or the other courts of the United States, the whole judicial power would have remained a dead letter in the Constitution. If, after the number of Judges of which the Supreme Court should consist had been fixed by law, and the offices had been filled, no times or places had been assigned by law for their meeting, there would have been Judges, but no court. And if, when that court was duly organized, no process had been given to bring before it the persons to be affected by its judgments; or if process had been given, without the proper officers to execute it, the court would still have been without the means of exercising its constitutional authority.

Such, no doubt, were the views entertained by the members of the first Congress that assembled under the Constitution. They proceeded to pass the necessary laws for the organization of the federal courts, and to provide them with process, and officers to execute their commands. But it is believed, that neither the first nor any subsequent Congress has passed any such laws as were necessary for carrying into execution that portion of the judicial power which extends to controversies between two or more States.

It is a fundamental principle in our laws, admitting of but few and special exceptions, that no court can give a valid judgment until it has acquired jurisdiction over the person of the defendant. In relation to all those suits against individuals and corporations, of which the federal courts have cognizance, it is not denied that they have been provided with the means of acquiring jurisdiction over the persons, (whether natural or artificial,) to be affected by their judgments. But to acquire jurisdiction over a State, it is believed that some other means were necessary than such writs as are "agreeable to the principles and usages of law;" for the reason that there was never any principle or usage of law to issue writs or legal process of any description against a State or independent government. Nor is it supposed that giving "forms and modes of proceeding," in equity cases, "according to the principles, rules and usages which belong to courts of equity," can reach the case of a State made a defendant; for the reason that there were no pre-existing forms or modes of proceeding against a State, nor were there any principles, rules or usages by which a court of equity could acquire jurisdiction over an independent government.

Without going into any particular examination of the acts of Congress relating to the judicial power of the United States, it may be sufficient in this place to say, that the grant of original jurisdiction over a State, was a new and extraordinary power: And if the federal courts could not exercise their ordinary jurisdiction over individuals, without the authority of an act of Congress for that purpose, it must be apparent, that this case called for special legislative provisions. A law giving to the federal courts such "forms of writs and executions," and "modes of process," in the several States, as were then "used and allowed in the Supreme Courts of the same," would sufficiently provide for impleading individuals, but would make no advances towards carrying into execution the power to implead a State.

In the case of corporations, the law had provided the appropriate process for compelling their appearance, and directed the mode in which service was to be made; but against a State or sovereignty, no process for compelling an appearance had ever been devised, nor had any means been pointed out, by which the defendant could be summoned to answer the complainant. It was, therefore, necessary in providing for the exercise of this power, either that some new

writ, summons or process, adapted to the case, should be given ; or that a new quality or efficacy should be imparted to those then in use. It was also necessary to direct in what manner such process should be served ; whether upon the Governor, or some other officer, executive or judicial, or upon the Legislature of the defendant State : whether some person should be required by law to appear for the State, or under what circumstances the court should be authorized to proceed *ex parte*. The means also by which a State should answer the complaint, whether through its Legislature, or some one or more of its executive officers, were all to be provided, for the reason that none of those things were previously known to the laws, or to any forms of judicial proceedings. These are only a sample of the many provisions that seem to be necessary in such a case. Similar difficulties must exist in every stage of the proceeding, and instead of diminishing, they will be found to multiply and increase in importance, in the consideration of the final decree or judgment to be rendered, and the proper means for carrying it into execution.

Although it was not designed, in this communication, to go beyond a brief statement of the leading reasons for the opinion that has been expressed, it may be proper to notice several cases which came before the court between the years 1790 and 1800, in which the court entertained jurisdiction against a State. The case of Georgia against Brailsford, determines nothing upon this question, for the reason that the State was the complainant in the bill, and so a voluntary party to the suit. And in relation to all the cases that came before the court, it is not unimportant to remark that no one appeared to argue against the exercise of jurisdiction ; and in only two of the cases did the court deliver any opinion upon that question. Those were the cases of *Chisholm against the State of Georgia*, decided in February term, 1793, and *Grayson against the State of Virginia*, decided in August term, 1796. In the first case, the leading question discussed by the judges who maintained the jurisdiction of the court, was, whether upon the true construction of the constitution, a State could be made a party defendant, and not whether the means of exercising jurisdiction had been provided by Congress. Mr. Justice Iredell was the only one that entered distinctly into the latter question, and he arrived at the following conclusions : “ 1st. That the constitution, so far as it respects the judicial authority, can only be carried into effect by acts of the legislature appointing courts, and prescribing their methods of proceeding. 2d. That Congress has provided no new law in regard to this case, but ex-

pressly referred us to the old. 3d. That there are no principles of the old law, to which we must have recourse, that in any manner authorise the present suit, either by precedent or by analogy. The consequence of which, in my opinion, clearly is, that the suit in question cannot be maintained."

In the case of *Grayson against Virginia*, after the service of a subpœna, a motion was made for a *distringas* to compel the State to enter an appearance; but the court postponed a decision, "in consequence of a doubt whether the remedy to compel the appearance of a State, should be furnished by the court itself, or by the legislature." Two general rules were finally adopted, the first of which was in the following words: "Ordered that when process at common law, or in equity, shall issue against a State, the same shall be served upon the Governor, or chief executive magistrate, and the Attorney-General of such State." The validity of this rule manifestly depended upon the power of the court to provide the means for impleading a State. It is true, that the federal courts were authorised by statute, "to make and establish all necessary rules for the orderly conducting business in the said courts;" but it is believed that this was only an authority to regulate proceedings in cases where the court had jurisdiction by law; and not a power by which jurisdiction could be acquired. The like remark is applicable to another provision, by which the courts of the United States were authorised to make alterations and additions in the forms of writs, and in the forms and mode of proceeding. Congress made direct and appropriate provisions for carrying into execution every portion of the judicial power, except that which related to the impleading of a State. And to place the jurisdiction of the court in this case, upon its power to make rules and regulate practice, is to suppose that Congress intended to do indirectly what it was not prepared to do by direct and specific legislation. And besides, if the power to make rules, and to regulate practice, was sufficient to enable the court to exercise this new and extraordinary jurisdiction over a State, it was most clearly sufficient to enable the federal courts to exercise every other portion of their jurisdiction; and all the other legislation upon this subject has been useless.

But whether this rule was originally valid or not, it was supposed to be obsolete, for the reason that it was not to be found in any subsequent publication of the rules of the court. This was one of two rules, which originally appeared together, in the report of the case

of Grayson against Virginia ; one of which has been regularly re-published ever since, the other never, until within the past year. Mr. Peters, in his Reports, says, that this omission arose from the fact, that it was not regularly entered by the clerk at the time of its adoption.

The doctrine that the Supreme Court of the United States cannot exercise original and compulsory jurisdiction over a State, has the sanction of much higher authority than any opinion I may entertain upon the subject.

None of the five States sued at the period already mentioned, were suspected either of a want of patriotism, or of attachment to the Union ; yet each of those States, to wit : Connecticut, New-York, Virginia, South-Carolina, and Georgia, neglected or refused to appear and submit to the jurisdiction of the court.

The decision of the court, entertaining jurisdiction, produced great dissatisfaction, and resulted in the adoption, by at least three-fourths of the States, of the eleventh amendment to the Constitution, which put an end to all of the suits then depending, before a final judgment had been recovered in either of them.

This controversy, and others of a similar character, have existed for the last thirty years ; and yet it is believed, that this is the first instance during that period, in which an attempt has been made to implead a State.

It is believed, that the commissioners on the part of New-Jersey, among whom were several distinguished lawyers, manifested their opinion, that the court could not exercise compulsory jurisdiction over a State, by a proposition for a voluntary submission of the matter in controversy to the Supreme Court of the United States. See their letters to the New-York Commissioners of the 15th and 17th September, 1827. Senate journal, 1828, appendix A.

Bills have been repeatedly presented to Congress, " prescribing the mode of commencing, prosecuting and deciding controversies between States ;" but they have never met with the approbation of the Legislature. One or more of those bills were brought in by the Senators from New-Jersey, who are reported to have admitted in the discussion of the bills, as did other Senators who were in favor of

bringing this power into exercise, that the Supreme Court could not exercise this jurisdiction without an act of Congress for that purpose, and that no such act had been passed. And those bills are said to have been opposed and rejected, not on the ground that the court could act without further legislation, but on the ground that the measure was inexpedient; and that the harmony of the Union would be best preserved by leaving dormant in the Constitution that portion of the judicial power which extends to controversies between States.

It is believed, therefore, that it may be truly said, that Congress has not only omitted, but that it has actually refused to pass the necessary laws for carrying into execution the judicial power over a State.

It may not be improper to add, that when this case came before the court, in February, 1830, (3 Peters 461,) neither the counsel for the State of New-Jersey, nor the court itself, treated this as a question that had been already settled, or as one free from difficulty. Mr. Wirt, on behalf of New-Jersey, asked the court to assign a day for the argument of the question of jurisdiction, before another subpoena should issue; saying, "it might, if decided against the plaintiffs, prevent unnecessary expense." And the court did assign a day for the argument of that question: and the Chief Justice added, that "if the argument should be merely *ex parte*, the court would not feel bound by its decision, if the State of New-York afterwards desired to have the question again argued." The court at a subsequent day, and without argument, awarded further process upon the ground of previous precedents; saying, however, "the State of New-York will still be at liberty to contest the proceeding at a future time in the course of the cause, if it shall choose to insist upon the objection."

This question is distinct from those in which the Supreme Court exercises an appellate jurisdiction, where a State may have been a party in the court below. In all such cases, the State is plaintiff, and so a voluntary party to the original proceeding: and although the parties are reversed in the forms of proceeding in the appellate court, it is still a continuance of the same suit, and cannot properly be said to be the commencement or prosecution of a suit against a State. There is this further distinction, that a writ of error acts only upon the record, and not upon the parties to it. It is directed

not to the party, but to the court in which the judgment was rendered, and directs that the record be sent into the appellate court for review. A citation is issued, but it is only for the purpose of advising the party, that the judgment will be reviewed; and neither an appearance or any other act on his part is required. This jurisdiction does not depend upon the character of the parties, but upon the character of the cause: and its exercise has been amply provided for by the 25th section of the judiciary act of 1789.

I submit herewith, marked D. a copy of one of the bills that have been before the Senate of the United States, on this subject. It was introduced by Mr. Dickerson, one of the Senators from New-Jersey, on the tenth day of January, 1822; and is entitled, "A bill prescribing the mode of commencing, prosecuting and deciding controversies between States." At the close of the paper marked D. another bill upon the same subject, brought in by Mr. Robbins, one of the Senators from Rhode-Island, on the eleventh day of December, 1828, is mentioned, and the difference between the two bills is pointed out. From these bills it will be seen, that the advocates for bringing into exercise this portion of the judicial power of the United States, have considered it a matter of great delicacy and importance, and one requiring very special legislative provisions. Several other bills having the same object in view, have at different periods been presented to Congress, but I have only seen copies of the two already mentioned.

But independent of the opinion which I entertained in relation to the power of the court, this was a proceeding against the State in its sovereign capacity, and involving its territorial jurisdiction. And whether the State should, or should not render a voluntary submission to the proceeding by appearing and answering the complaint, was a question belonging either to the Governor or the Legislature, and not to the Attorney-General, or any subordinate agent of the government. This opinion was suggested in a communication to your Excellency, in July 1829, soon after the suit was instituted, and again in my communication in December following, which was laid before the Legislature by your Excellency, on the opening of the session of 1830.

The bills presented to Congress, for the purpose of carrying into execution that portion of the judicial power which relates to controversies between States, directed that the State made a defendant

should be notified by the service of a certified copy of the bill of complaint, and all documents, upon the Governor or chief executive officer of the defendant State; and that a notification should be served by the marshal on the Legislature of the defendant State, at the time of serving a copy of the bill. Those bills further provided, that no person should be permitted to act for the defendant State, unless legally authorized by the Legislature thereof: and that certain rules should be granted against the Legislature of the State impleaded. These provisions sufficiently indicate, that the advocates for bringing into exercise this portion of the judicial power of the United States, thought such a proceeding of sufficient importance to be presented to the State in its sovereign capacity, and to be acted upon by its Legislature.

The first process issued in the cause was made returnable on the first Monday in August 1829. The Supreme Court of the United States does not sit at that period in the year; but it is a day on which rules may be entered, in the exercise of the ordinary equity jurisdiction of the court. It was thought proper to advise the clerk of the court, that this was not deemed a proper case for entering orders as of course: and a letter was addressed to him on the 27th of July, 1829, a copy of which, marked A, is hereunto annexed. The clerk was requested to lay that letter before the court, should the subject at any time be presented for its consideration.

On the 26th day of December, 1829, I addressed a communication to your Excellency, which has been before mentioned, and which will be found in the legislative documents for 1830, No. 4.

While at the city of Washington in the discharge of other official duties, I was, on the thirteenth day of January, 1830, served with a notice that the Supreme Court would be moved on the thirteenth day of February following, to proceed *ex parte* in the cause, and to take the bill filed by New-Jersey as confessed, and to render a decree in conformity with the prayer thereof. Not having received any instructions to appear in the suit, and thinking it improper to do so without authority, I addressed a letter to the Chief Justice and associate justices of the Supreme Court, on the eve of my departure from Washington, a copy of which, marked B, is hereunto annexed.

When that motion came on to be heard, the Court awarded further process, without passing upon the question of jurisdiction. That process was afterwards served, and was returnable on the second Monday of January last. In my communication on that subject, at the commencement of the present session of the Legislature, it was mentioned that a decision of the question of jurisdiction might be expected at the present term of the Court.

On the fifth day of the present month, a motion was made on the part of New-Jersey, in relation to the further progress of the suit: and an opinion has since been delivered, and an order or decree been made by the Court, copies of which, marked C, are hereunto annexed. The order is, in substance, that the complainant be at liberty to proceed *ex parte*, and that unless the defendant, being served with a copy of the decree sixty days before the ensuing August term of the Court, shall appear on the second day of the next January term thereof, and answers the bill, the Court will proceed to hear the cause on the part of the complainant, and decree on the matter of the bill.

Although this order appears to be absolute, that the Court will proceed to a decree, the concluding paragraph of the opinion will shew that it was not so intended. The language of the opinion, after stating that the Court would proceed to a final hearing and decision, is as follows—"But, inasmuch as no final decree has been pronounced, or judgment rendered, in any suit heretofore instituted in this Court against a State, the question of proceeding to a final decree will be considered as not conclusively settled, until the cause shall come on to be heard in chief."

Two remarks are respectfully submitted upon this opinion.

The Chief Justice and those justices who concurred with him in opinion, have regarded the question of jurisdiction as one that had been previously adjudged; without saying what would be their opinions independent of the former decisions.

The jurisdiction asserted extends only to the power of hearing the parties, while the question of proceeding to a final decree, (without which the litigation, to say the least, would be useless,) is to be considered as not conclusively settled.

It will be seen that nothing has yet been done to prejudice the rights of the State, if it shall be thought proper, either as a matter of duty or expediency, to appear and defend the suit. But if that question is to be passed upon by the Legislature, it ought to be done before the close of the present session.

I am, with great respect,

Your Excellency's

Obedient humble servant,

GREENE C. BRONSON,

Attorney-General.

DOCUMENTS.

(A.)

Utica, (N. Y.) July 27, 1829.

WILLIAM THOMAS CARROLL, Esq.

Clerk of the Supreme Court of the United States.

SIR—

The Governor and Attorney-General of the State of New-York, were recently served with the copy of a bill in equity, said to have been exhibited in the supreme court of the United States, by "*The State of New-Jersey, vs. The People of the State of New-York*;" and with a subpoena in that cause, to appear on the first Monday of August next.

I beg leave respectfully to say, that such service is regarded, on the part of the State of New-York, as utterly void; because the mode adopted is unknown to the common law, is not authorised by any statute of the United States, nor warranted by any existing rule or order of the court out of which the process issued. A rule on the subject of the service of process upon a State as defendant, was adopted in August term, 1796, (3 Dall. Rep. 320, 335); but this rule, (so far as I have observed,) has been omitted in every subsequent publication of the rules of the supreme court, and is no doubt obsolete.

Entertaining this view of the subject, it is supposed that no proceeding will be had in the cause, either in vacation or at term, until the court shall have directed the mode of serving such process, and the prescribed course shall have been pursued.

Whether the court has been clothed with power to compel the appearance of a State as defendant, in an original suit or proceeding, is a question, (among others,) which will no doubt receive from that high tribunal, all the consideration that its importance demands, before any order shall be made in the premises.

I will thank you to hand this to the court, if the subject shall ever be presented to their consideration; and should any rule or order be made in, or affecting this cause, please send a certified copy, addressed to me at Albany.

I am sir, with great respect,

Your obedient servant,

GREENE C. BRONSON,

Att'y. Gen. State of New-York.

(B.)

*Washington City, Feb. 8, 1830.**To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States.*

A bill has been exhibited in this court by the State of New-Jersey, against the People of the State of New-York, concerning the boundary line between the two States ; and a subpoena to appear and answer, with a copy of the bill, has been served upon the Governor of the State of New-York. A notice has recently been served, that on the 13th instant the court would be moved to take the bill *pro confesso*, and proceed to a decree for the want of an appearance.

I beg leave most respectfully to say, that the opinion is entertained, on the part of the State of New-York, that this court cannot exercise jurisdiction in such a case, without the authority of an act of Congress, for carrying into execution that portion of the judicial power of the United States, which extends to controversies between two or more States.

The Governor of the State of New-York has made a communication upon the subject of this suit to the Legislature, now in session, but it has not yet been acted upon, so far as I have been advised. Whether the Legislature will authorise any person to appear and discuss the question of jurisdiction ; or, whether for the purpose of obtaining a judicial decision upon the merits of an unfortunate controversy, they will order an appearance, waiving the question of jurisdiction, I am, at this time, unable to determine.

I have deemed it proper to make this communication, to explain what might otherwise be supposed a want of respect for this honorable court, on the part of the Executive Authority of the State of New-York.

GREENE C. BRONSON,
Atty. Gen. State of New-York.

(C.)

Opinion and Order of the Supreme Court of the United States.

The State of New-Jersey, against The People of the State of New-York.	}	Opinion and order of the Supreme Court of the United States, deliver- ed by Mr. Chief Justice Marshall.— January term, 1831.
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This is a bill filed by the State of New-Jersey against the State of New-York, for the purpose of ascertaining and settling the boundary between the two States.

The constitution of the United States declares that "the judicial power shall extend" "to controversies between two or more States." It also declares that "in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction."

Congress has passed no act for the special purpose of prescribing the mode of proceeding in suits instituted against a State, or in any suit in which the Supreme Court is to exercise the original jurisdiction conferred by the constitution.

The act "to establish the judicial courts of the United States," sec. 13 enacts, "that the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a State is a party, except between a State and its citizens; and except also between a State and citizens of other States, or aliens; in which latter case, it shall have original but not exclusive jurisdiction." It also enacts, sec. 14, "that all the before mentioned courts of the United States, shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially provided by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." By the 17th section it is enacted "that all the said courts of the United States shall have power" "to make and establish all necessary rules for the ordinary conducting business in the said courts, provided such rules are not repugnant to the laws of the United States."

"An act to regulate processes in the courts of the United States," was passed at the same session with the judicial act, and was depending before Congress at the same time. It enacts "that all writs and processes issuing from a supreme or a circuit court, shall bear teste," &c. This act was rendered perpetual in 1792. The first section of the act of 1792, repeats the provision respecting writs and processes issuing from the supreme or a circuit court. The second continues the form of writs, &c. and the forms and modes of proceeding in suits at common law prescribed in the original act; "and in those of equity, and in those of admiralty and maritime jurisdiction, according to the principles, rules and usages which belong to courts of equity and to courts of admiralty respectively, as contradistinguished from courts of common law; except so far as may have been provided for by the act to establish the judicial courts of the United States; subject however to such alterations and additions as the said

courts respectively shall, in their discretion, deem expedient, or to such regulations as the Supreme Court of the United States shall think proper, from time to time, by rule to prescribe to any circuit or district court concerning the same."

At a very early period in our judicial history, suits were instituted in this Court against States, and the questions concerning its jurisdiction and mode of proceeding, were necessarily considered. So early as August 1792, an injunction was awarded at the prayer of the State of Georgia to stay a sum of money recovered by Brailsford, a British subject, which was claimed by Georgia under her acts of confiscation. This was an exercise of the original jurisdiction of the Court, and no doubt of its propriety was expressed.

In February 1793, the case of *Oswald vs. The State of New-York*, came on. This was a suit at common law. The State not appearing on the return of the process, proclamation was made, and the following order entered by the court—"Unless the State appear by the first day of the next term, or show cause to the contrary, judgment will be entered by default against the said State."

At the same term, the case of *Chisholm's executors against the State of Georgia* came on, and was argued for the plaintiffs by the then Attorney-General, Mr. Randolph. The judges delivered their opinions seriatim; and those opinions bear ample testimony to the profound consideration they had bestowed on every question arising in the case. Mr. Chief Justice Jay, Mr. Justice Cushing, Mr. Justice Wilson and Mr. Justice Blair, decided in favor of the jurisdiction of the Court, and that the process served on the Governor and Attorney-General of the State was sufficient. Mr. Justice Iredell thought an act of Congress necessary to enable the court to exercise its jurisdiction.

After directing the declaration to be filed, and copies of it to be served on the Governor and Attorney-General of the State of Georgia, the Court ordered, "that unless the said State shall either in due form appear, or show cause to the contrary in this Court by the first day of the next term, judgment by default shall be entered against the said State."

In February term 1794, judgment was rendered for the plaintiff, and a writ of inquiry was awarded, but the 11th amendment to the constitution prevented its execution.

Grayson vs. The State of Virginia, 3 Dallas, 320, 1st Peters cond. Reports, 141, was a bill in equity. The subpoena having been returned executed, the plaintiff moved for a distringas to compel the appearance of the State. The Court postponed its decision on the motion in consequence of a doubt, whether the remedy to compel the appearance of the State should be furnished by the Court itself, or by the Legislature. At a subsequent term, the Court, "after a particular examination of its powers," determined that, though "the general rule prescribed by the adoption of that practice which is founded on the custom and usage of courts of admiralty and equity," "still it was thought that we are also authorised to make such deviations as are necessary to adapt the process and rules of the Court

to the peculiar circumstances of this country, subject to the interposition, alteration and control of the Legislature.

We have therefore agreed to make the following general orders.

1. Ordered, that when process at common law or in equity, shall issue against a State, the same shall be served upon the Governor or chief executive magistrate, and the Attorney-General of such State.

2. Ordered, that process of subpœna issuing out of this court in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and further, that if the defendant on such service of the subpœna, shall not appear at the return day contained therein, the complainant shall be at liberty to proceed *ex parte*."

In *Huger & al. vs. the State of South-Carolina*, 3d Dallas, 339, the service of the subpœna having been proved, the court determined, that the complainant was at liberty to proceed *ex parte*. He accordingly moved for and obtained commissions to take the examination of witnesses in several of the States.

Fowler & al. vs. Lindsey & al. and Fowler & al. vs. Miller, 3 Dallas, 411, were ejectments depending in the circuit court for the district of Connecticut, for lands over which both New-York and Connecticut claimed jurisdiction. A rule to show cause why these suits should not be removed into the Supreme Court by certiorari was discharged because a State was neither nominally nor substantially a party. No doubt was entertained of the propriety of exercising original jurisdiction, had a State been a party on the record.

In consequence of the rejection of this motion for a certiorari, the State of New-York, in August term, 1799, filed a bill against the State of Connecticut, 4 Dallas 1, 1st Peiers Cond. Reports 203, which contained an historical account of the title of New-York to the soil and jurisdiction of the tract of land in dispute; set forth an agreement of the 29th of November, 1783, between the two States on the subject; and prayed a discovery, relief, and injunction to stay the proceedings in the ejectments depending in the circuit court of Connecticut.

The injunction was, on argument, refused, because the State of New-York was not a party to the ejectments, nor interested in their decision.

It has then been settled by our predecessors, on great deliberation, that this court may exercise its original jurisdiction in suits against a State, under the authority conferred by the Constitution, and existing acts of Congress. The rule respecting the process, the persons on whom it is to be served, and the time of service, is fixed. The course of the court on the failure of the State to appear after the due service of process has been also prescribed.

In this case, the subpœna has been served as is required by the rule. The complainant according to the practice of the court, and according to the general order made in the case of *Grayson vs. the Commonwealth of Virginia*, has a right to proceed *ex parte*, and the court will make an order to that effect, that the cause may be prepared for a final hearing. If upon being served with a copy of such order, the defendant shall still fail to appear or to show cause to the contrary, this court will, so soon thereafter as the cause shall be

prepared by the complainant, proceed to a final hearing and decision thereof. But inasmuch as no final decree has been pronounced or judgment rendered in any suit heretofore instituted in this court against a State, the question of proceeding to a final decree will be considered as not conclusively settled until the cause shall come on to be heard in chief.

Mr. Justice Baldwin did not concur in the opinion of the court directing the order made in the cause.

The State of New-Jersey, Complainant,
against
 The People of the State of New-York, De-
endant.

The subpoena in this cause having been returned executed, sixty days before the return day thereof, and the defendant having failed to appear, it is, on the motion of the complainant, decreed and ordered, that the complainant be at liberty to proceed *ex parte*; and it is further decreed and ordered, that unless the defendant being served with a copy of this decree, sixty days before the ensuing August term of this court, shall appear on the second day of the next January term thereof, and answer the bill of the complainant; this court will proceed to hear the cause on the part of the complainant, and to decree on the matter of the said bill.

Washington, Feb. 12, 1831.

I, Richard Peters, reporter of the decisions of the Supreme Court of the United States, do hereby certify, that the foregoing is a true copy of the order and opinion of said Supreme Court, delivered in the above cause by Mr. Chief Justice Marshall, at January term eighteen hundred and thirty-one.

RICH'D PETERS.

(D.)

Bill introduced by Mr. Dickerson of New-Jersey, Jan. 10th 1822.

A BILL *prescribing the mode of commencing, prosecuting and deciding controversies between states.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in all cases where any matter of controversy now exists, or hereafter may exist, between states in relation to jurisdiction, territory or boundaries, or any other matter which may be the proper subject of judicial decision, it shall be lawful for the state deeming itself aggrieved, to institute against the state of which it complains a suit, or suits, in the supreme court of the United States, by bill, in the nature of a bill in equity, stating all the facts, and exhibiting and referring to all papers and documents deemed necessary to substantiate the complaint.

§ 2. *And be it further enacted, That all suits by one state against another state, shall be brought, prosecuted and defended, in the le-*

gal and proper names of such states respectively ; and all process and proceedings shall be sued out and entered accordingly.

§ 3. *And be it further enacted*, That no suit shall be commenced or prosecuted in the name of any state, as complainant, under the authority of this act, without the order or direction of the legislature of the state suing ; a copy of which, legally certified, shall be filed with the bill in the clerk's office of the supreme court of the United States, at the time of the commencement of the suit ; and it shall, moreover, be the duty of the legislature of every complaining state to provide for, and cause to be appointed, some fit person or persons to manage the prosecution of such suit, and the document or documents by which such appointment is made, or a copy or copies thereof, legally certified, shall accompany the bill of complaint.

§ 4. *And be it further enacted*, That the state made defendant by any suit under the provisions of this act, shall be notified thereof by the delivery of a copy of the bill of complaint, and all documents therein referred to, legally certified by the clerk of the supreme court, to the governor, or chief executive officer of the defendant state, by the marshal thereof ; and there shall, moreover, be issued by the said clerk, a written notification, stating when and where the said defendant state shall enter, in legal manner, appearance to the suit, and answer the bill of complaint ; a copy of which, in like manner, shall be served on the legislature of any defendant state, by the marshal, at the time of serving the copy of the bill and documents above mentioned. And it shall be the duty of the marshal to make due return of the service of such bill, documents and notification, to the clerk of the supreme court, before the day specified for appearance, stating when and where such service was performed.

§ 5. *And be it further enacted*, That no act or proceeding on the part of any defending state shall be permitted, but by some person or persons legally authorised by the legislature thereof, as manager or managers ; and not by such person or persons, until the instrument or document, or instruments or documents, vesting such power, legally certified, is or are filed in the clerk's office of the supreme court.

§ 6. *And be it further enacted*, That the state made defendant in any suit, under the provisions of this act, may, by any answer or answers, as the case may be, state such matters of fact and law, and exhibit such documents as may be deemed necessary in defence ; which said answer or answers shall be filed with the clerk of the supreme court, within one year after notification of suit, in the manner hereinafter directed : *Provided, however*, That the court may, for substantial cause shown, reasonably enlarge the time for filing such answer or answers.

§ 7. *And be it further enacted*, That the persons appointed to prosecute and defend any suit brought under the provisions of this act, shall be considered, to all intents and purposes, as representing the states respectively ; and all and every of their acts of record, in relation to the prosecution or defence of such suit, shall be deemed and held as valid and effectual as similar acts between individual

and individual ; and all notices of the time and place of taking depositions, and of any act or thing necessary to be done or executed in the country, shall be considered and taken to be well served or executed on either side, by delivering to the adverse agent or manager a written notification, as in the case of suits between individuals and individual.

§ 8. *And be it further enacted*, That for the purposes of ascertaining boundary lines, objects referred to, and for any other purpose necessary to be done and executed in the country, in relation to any suit brought under the provisions of this act, it shall be lawful for the court to appoint one or more fit persons as commissioners, by order of record, whose duty it shall be, under the pains and penalties consequent upon contempts, to do and perform such act or acts, in the time and manner prescribed in the court's said order, first making oath, before some officer legally authorised to administer oaths, that such commissioners, respectively, will faithfully and impartially execute the duties specified in such order.

§ 9. *And be it further enacted*, That the same rules and principles, which are established by law, equity and practice, in the supreme and circuit courts, in relation to suits by individuals against individuals, shall govern the said court and the parties to any suit or suits, commenced under this act, as to amendments and proceedings, not herein mentioned, and as to the manner of taking depositions, the competency, admissibility, and relevancy, or right of testimony.

§ 10. *And be it further enacted*, That one year after the defendant state shall have filed the answer or answers herein directed, the court may proceed to hear and determine the matter in controversy between such states : *Provided*, Notice of record of such hearing has been previously entered by one of the parties ; and no hearing shall be had after answer or answers filed, without such notice : *And provided also*, That the court, for good cause shown, may enlarge the time for such hearing.

§ 11. *And be it further enacted*, That in case the answer of any defendant state shall not be filed within the time limited by this act, and no cause is shewn to the court why such failure has happened, the court, on motion, shall award against the manager or managers of the defence, if any there be, and in case there is none, against the legislature of such state, a rule to shew cause why the court should not proceed to take and consider the bill as true, and decree accordingly ; which said rule shall be served on the manager or managers, or the legislature, as the nature of the case may require, by the marshal's delivering a sworn, or legally certified copy thereof ; and it shall be the duty of the marshal to make delivery thereof, and certify forthwith to the court, specially, the time and manner of such delivery.

§ 12. *And be it further enacted*, That at the term of the supreme court next after the return of the rule served, as herein before directed, the court may, unless good cause is shewn against such procedure, hear the bill of complaint, consider it as true, and pronounce such decree as may be consistent with the principles of law and equity.

§ 13. *And be it further enacted*, That upon hearing any matter of controversy between states, pursuant to the provisions of this act, the court shall decree to the party succeeding, all legal and reasonable costs of suit, to be ascertained in the manner hereinafter directed.

§ 14. *And be it further enacted*, That it shall be the duty of the supreme court to appoint one or more fit persons as commissioners to ascertain upon oath, and report specially to the court, the amount of all reasonable costs expended in the prosecution of any suit, under the provisions of this act, including as well pecuniary disbursements, as the service of officers ; which said sums the court may adjudge to be paid to the several parties or persons entitled, according to the nature of said report.

§ 15. *And be it further enacted*, That whenever any decree shall be pronounced in pursuance of the provisions of this act, it shall be the duty of the court to cause to be delivered to the governor, or chief executive officer of the state against which such decree is pronounced, a legally certified copy of the decree, with a request from the court, that the same may, in a reasonable time, be executed : to cause the same to be carried into complete effect, to make any order necessary and proper for that purpose, and to issue a mandate or warrant to any marshal or marshals of the United States, requiring him or them to execute such decree in the manner to be prescribed in said warrant or mandate, and to make return thereof as in other cases. And it shall be the duty of any such marshal or marshals, and he or they shall be, and they are hereby authorised, to carry said decree into execution accordingly, and to command and receive assistance, and use force if necessary. And for any services rendered by any such marshal or marshals, in the execution of any such decree, as well as for any other services that shall be by the court required of him or them, the said marshal or marshals shall receive a reasonable compensation, to be adjudged of and allowed by the court.

Bill introduced by Mr. ROBBINS, of Rhode-Island, Dec. 11, 1828.

The title, and the first fourteen sections of this bill, corresponded with the title and first fourteen sections of the bill introduced by Mr. DICKERSON.

The 15th section was in the following words :

“ § 15. *And be it further enacted*, That whenever any decree shall be pronounced, in pursuance of the provisions of this act, it shall be the duty of the court to cause to be delivered to the governor, or chief executive officer of the state against which such decree is pronounced, a legally certified copy of the decree, with a request from the court, that the same may, in a reasonable time, be executed.”

A section was added in the following words :

“ § 16. *And be it further enacted*, That this act shall be in force from and after the passing thereof, for five years then next ensuing, and to the end of the current session of congress in which the said five years shall expire, and no longer.”

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